

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MELANIE F. DENNEY,)	
)	Case No. _____
Plaintiff,)	
)	
vs.)	NOTICE OF REMOVAL
)	
THE GUARDIAN LIFE INSURANCE)	
COMPANY OF AMERICA,)	
)	
Defendant.)	

Defendant The Guardian Life Insurance Company of America (“Guardian” or “Defendant”), by and through its undersigned attorneys, files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, as follows:

1. Guardian is named as defendant in Case No. CI 16 949 filed in the District Court of Lancaster County, Nebraska (the “State Court Action”).

2. Guardian is a mutual insurance company organized under the laws of the state of New York with its principal place of business located in the state of New York. Thus, Defendant Guardian is deemed to be a citizen of the state of New York. 28 U.S.C. § 1332(c)(1).

3. Plaintiff Melanie F. Denney (“Plaintiff”) is a Nebraska resident. Complaint ¶ 1.

4. The Complaint in the State Court Action was filed with the District Court of Lancaster County, Nebraska on or about March 16, 2016.

5. Guardian was served by certified mail on or about March 21, 2016. (See Proof of Service filed March 24, 2016.)

6. This Notice of Removal is being filed within 30 days after Defendant was served with a copy of Plaintiff’s Complaint setting forth the claims upon which this removal is based. Defendant has not filed any responsive pleadings concerning this case in the District Court of Lancaster County, Nebraska, prior to filing this Notice of Removal.

7. By this Notice of Removal, Defendant does not waive any defense, jurisdictional or otherwise, which it may possess.

8. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders filed in the State Court Action are attached hereto as **Exhibit 1**.

9. In the Complaint, Plaintiff, a Nebraska resident, alleges bad faith by Defendant for denial of life insurance benefits for a policy allegedly insuring the life of Plaintiff's husband and prays for damages in excess of \$150,000. Complaint ¶¶ 5, 12 and prayer.

10. A civil action is removable if the plaintiff could have originally brought the action in federal court. See 28 U.S.C. § 1441(a).

11. Defendant is entitled to remove the State Court Action to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because this is a civil action involving an amount in controversy exceeding \$75,000 between parties with diverse citizenship. Defendant also notes that the instant action is not "direct action against the insurer of a policy, or contract of liability insurance . . . to which action the insured is not joined as a party-defendant" under 28 U.S.C. § 1332(c)(1), because Plaintiff's cause of action against Defendant is not of such a nature that liability could be imposed against the insured, Plaintiff's husband, which is required for a direct action. Davis v. Jackson National Life Ins. Co., No. 14-96, 2014 WL 4809521, *3 (M.D. Fla. Sept. 26, 2014); Bucey v. Washington Nat. Life Ins. Co., No. 06-139, 2006 WL 1495077, *1 (W.D. Mo. May 24, 2006).

12. Promptly after filing this Notice of Removal, Defendant will give written notice to the adverse party as required by 28 U.S.C. § 1446(d) and will deliver a copy of this Notice to the District Court of Lancaster County, Nebraska.

DATED this 15th day of April, 2016.

THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA, Defendant

By: s/ Shilee T. Mullin

Shilee T. Mullin, Bar Number 22286

Attorney for Defendant

Spencer Fane LLP

12925 West Dodge Road, Suite 107

Omaha, NE 68154

Telephone: (402) 965-8600

Fax: (402) 965-8601

E-mail: smullin@spencerfane.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically with the United States District Court for the District of Nebraska this 15th day of April, 2016, and a copy was sent via first class United States mail, postage prepaid, to Plaintiff, addressed to her attorney as follows:

Donald H. Bowman
Bowman & Krieger
1045 Lincoln Mall, Suite 100
Lincoln, NE 68508

s/ Shilee T. Mullin

Attorney for Defendant